



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/172748

PRELIMINARY RECITALS

Pursuant to a petition filed March 10, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Rock County Department of Social Services ["County"] in regard to Child Care benefits ["CC"], a Hearing was held via telephone from Madison, Wisconsin on April 26, 2016. At petitioner's request a Hearing scheduled for April 7, 2016 was rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: FOP-172747. It is noted that in the MOP-172749 matter the County withdraw its Medical Assistance ["MA"] overpayment Claim against petitioner (MA Claim # 3900457843; December 1, 2014 to June 30, 2015; \$424.70) and that MA Claim now has a zero (\$0.00) balance; petitioner then withdrew her request for a Hearing in that MA matter.

The issue for determination is whether it was correct to establish the following Claim against petitioner for overpayments of CC: Claim Number [REDACTED]; December 1, 2014 to March 31, 2015; \$495.40.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: [REDACTED], ESS

Rock County Department of Social Services
1900 Center Avenue
PO Box 1649
Janesville, WI 53546

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 34 years old) is a resident of Rock County, Wisconsin.
2. The County established the following Claim against petitioner for overpayments of CC: Claim Number 5 [REDACTED]; December 1, 2014 to March 31, 2015; \$495.40.
3. The Overpayment listed in *Findings of Fact* #2, above, was caused by CC agency administrative error; the CC agency failed to correctly budget petitioner's employment income (it did not include her tips in her income).

DISCUSSION

The County or agency must determine whether an overpayment of CC has been made and, if so, the amount of the overpayment. Wis. Stat. § 49.195(3) (2013-14); See also, Wis. Admin. Code §§ DCF 101.23 (October 2015) & 201.04(5)(a) (March 2016); *Wisconsin Shares Child Care Assistance Manual* ["CC Manual"], 2.1.5. Even if the overpayment is partly or wholly due to agency error it must still be repaid. Wis. Admin. Code § DCF 101.23(3) (October 2015); and, Wis. Admin. Code § DCF 201.04(5)(a)1. (March 2016); CC Manual 2.1.5.1 & 2.5.1.2. A W-2 CC overpayment is any W-2 CC benefit or payment received in an amount greater than the amount the individual was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment {a W-2 CC overpayment may be the result of client error, administrative error, or an Intentional Program Violation ["IPV"]}. Wis. Admin. Code § DCF 101.23(1)(g) (October 2015); and, Wis. Admin. Code § DCF 201.04(5)(a)1. (March 2016); CC Manual 2.1.5.1. & 2.1.5.2.

As noted in the above *Findings of Fact* the CC overpayment in this case was due to agency error. It was not petitioner's fault. Petitioner does not dispute that the overpayment occurred. However, petitioner argues because the overpayment is not her fault she should not have to repay it. It is most understandable that petitioner would feel this way. Nevertheless, as noted above, a CC overpayment is any CC benefit or payment received in an amount greater than the amount the individual was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. Even if the overpayment is partly or wholly due to CC agency error it must still be repaid. Therefore, petitioner is liable for the overpayments listed in *Findings of Fact* #2, above.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to establish the following Claim against petitioner for overpayments of CC: Claim Number [REDACTED]; December 1, 2014 to March 31, 2015; \$495.40.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 5th day of May, 2016

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 5, 2016.

Rock County Department of Social Services
Public Assistance Collection Unit
Child Care Fraud